

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Norfolk Division

No. 9. By receiving a copy of the Report and Recommendation, the parties were advised of their right to file written objections to the Magistrate Judge's findings and recommendations. Id. at 7. Neither party filed an objection.

The Court, having reviewed the record with no objections, agrees with the Report and Recommendation on the grounds stated by the Magistrate Judge and **ADOPTS** and **APPROVES** the Magistrate Judge's Report and Recommendation filed on March 9, 2016, ECF No. 9, in its entirety as the Court's own opinion. It is, therefore, **ORDERED** that the Petition, ECF No. 1, be **DISMISSED WITHOUT PREJUDICE** and **PETITIONER IS ADVISED** that his claim for relief under Johnson v. United States, 135 S.Ct. 2551 (2015) does apply retroactively, see Welch v. United States, No. 15-6418, ___ U.S.___ (April 18, 2016) (slip op.) (holding that the Court's decision in Johnson was a new substantive rule of law that applies retroactively in cases on collateral review), and that Petitioner therefore must file a § 2255 petition in the district in which he was sentenced, delineating his prayer for relief pursuant to Johnson before the one year statute of limitations expires on June 26, 2016. See 28 U.S.C. § 2255(f)(3). Further, because this may be a successive habeas petition, Petitioner may need to seek authorization for a second petition from the Fourth Circuit.

The Petitioner may appeal from the judgment entered pursuant to this Final Order by filing a written notice of appeal with the Clerk of the Court at the Walter E. Hoffman United States Courthouse, 600 Granby Street, Norfolk, Virginia 23510, within sixty days from the date of entry of judgment. Because the Petitioner has failed to demonstrate "a substantial showing of the denial of a constitutional right," 28 U.S.C. § 2253(c)(2), pursuant to Federal Rule of Appellate Procedure 22(b), this Court declines to issue a certificate of appealability. See Miller-El v. Cockrell, 537 U.S. 322, 335-36 (2003).

The Clerk is **DIRECTED** to forward a copy of this Order and the Application for Second or Successive Relief to the Petitioner and counsel of record for the Respondent.

It is so ORDERED.

/s/
Rebecca Beach Smith
Chief Judge

-RBS
Rebecca Beach Smith
Chief United States District Judge

Norfolk, Virginia

Date: April 22, 2016